

SENATE BILL REPORT

SB 5018

As Reported By Senate Committee On:
Judiciary, February 28, 2007

Title: An act relating to guardianship roles.

Brief Description: Prohibiting a professional guardian from serving as both guardian or limited guardian and attorney or guardian ad litem.

Sponsors: Senators Jacobsen, Kline and Roach.

Brief History:

Committee Activity: Judiciary: 1/26/07, 2/28/07 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5018 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Roach and Weinstein.

Staff: Lidia Mori (786-7755)

Background: Upon receipt of a petition for appointment of a guardian or limited guardian, the court is required to appoint a guardian ad litem (GAL) to represent the best interests of the alleged incapacitated person. The GAL must be found or known by the court to be free of influence from anyone interested in the result of the proceeding, and have the requisite knowledge, training, or expertise to perform the duties of a GAL. The duties include meeting and consulting with the alleged incapacitated person as soon as practicable following appointment to explain the substance of the petition and the rights of the alleged incapacitated person. The GAL is required to submit a comprehensive report to the court containing information as specified in law.

Alleged incapacitated individuals have the right to be represented by counsel of their choosing at any stage in a guardianship proceeding. The attorney is required to act as an advocate for the alleged incapacitated person and may not substitute his or her judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role is distinct from that of the GAL.

A "professional guardian" is a guardian appointed by the court who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian of three or more persons. Professional guardians must be certified by the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Certified Professional Guardian Board and must meet certain education, experience, and training requirements established by the Board.

Summary of Bill: A professional guardian is prohibited from serving as both a guardian or limited guardian and an attorney or GAL for the same incapacitated person. A GAL may not be a professional guardian seeking appointment as a guardian or limited guardian for the same alleged incapacitated person, and courts are prohibited from ordering a GAL to also serve as a professional guardian for the same person.

The costs for court ordered mediation in a guardianship proceeding will be allocated according to RCW 11.96A.150. The costs, including reasonable attorneys' fees, may be awarded to either party from any party to the proceedings, from the assets of the estate or trust involved, or from any nonprobate asset that is the subject of the proceeding.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary): (1) A professional guardian is prohibited from serving as both a guardian or limited guardian and an attorney or guardian ad litem (GAL) for the same incapacitated person except that it is allowed in extraordinary circumstances and only for as long as those circumstances exist. (2) A GAL may not be a professional guardian seeking appointment as a guardian or limited guardian unless the person has complied with the ethical advisory opinions issued by the certified professional guardian board. (3) The GAL fee will be charged to the alleged incapacitated person if a full or limited guardianship is established or if a less restrictive alternative is approved by the court. If there is no finding of incapacity, the GAL fee may be charged to the petitioner, the alleged incapacitated person, or any person who has appeared in the action, as the court deems just.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There should be broader industry scrutiny of guardians and conflict of interest should be required to be disclosed. Through public education, consumers as well as attorneys should be better educated about guardianship laws. Sometimes a guardian ad litem is a straw man for a professional guardian.

CON: Maybe an attorney should be appointed for every alleged incapacitated person if that person cannot afford an attorney. In mediation, there is no substantially prevailing party. The mediator is supposed to be neutral and if he or she has to assess costs, that would interfere with the perception of neutrality.

Persons Testifying: PRO: Senator Jacobsen, prime sponsor; Claudia Donnelly, citizen; Loren M. Freeman, Freeman and Associates; Tami Ingraham, citizen.

CON: Robert Nettleton, citizen.